

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: M.G.B 1, LLC d/b/a Mission Cantina
c/o Sam Kochan
88 Mechanic Street, Amherst, MA 01002

Property owner: Charles Wang
90 Halcyon Drive, Bristol, CT 06010

Date application filed with the Town Clerk: December 23, 2010

Nature of request: To establish a Class II restaurant with outdoor dining, in the space formerly occupied by Andiamo Restaurant, under Section 3.352.1 and 5.041 of the Zoning Bylaw

Address: 481-485 West Street (Map 19D, Parcel 19, BVC Zoning District)

Legal notice: Published on January 12, 2011 and January 19, 2011 in the Daily Hampshire Gazette and sent to abutters on January 11, 2011

Board members: Barbara Ford, Tom Ehrgood, Mark Parent

Submissions:

- ZBA application, filed with Town Clerk on December 23, 2010;
- Project Summary;
- Town GIS, with Zoning Districts;
- Site Plan & two (2) aerial photographs;
- Proposed floor plan;
- Previously approved floor plan (Andiamo);
- Management Plan form;
- Amended Management Plan, dated February 2, 2011;
- Revised floor plan, dated January 26, 2011;
- Sample menu;
- Sample sign graphics;
- Proposed 10.38 findings;
- ZBA FY2003-00043, with approved plans (Andiamo), submitted by Town Staff;
- Letter from Janet Greeblatt, Michele Barale, Margie Springer Young & Jane Luff, dated January 25, 2011;
- Email from Building Commissioner, Bonita Weeks, dated February 3, 2011;

Site Visit: January 25, 2011

Eric Beal, Tom Ehrgood and Mark Parent met with the applicant, Sam Kochan, and his attorney, Kristi Bodin on-site. Subsequently, Mr. Beal was unable to participate on the panel and Barbara Ford visited the site separately. Ms. Ford viewed only the exterior. The following was observed:

- The location of the property along the west side of Route 116 and the south side of West Pomeroy Lane.

- The existing one-story commercial building containing three (3) tenant spaces, including a vacant space, Sibies Subs and Pizza and South Amherst Liquor Mart.
- The existing parking area at the front of the property containing approximately 27 parking spaces and a small, covered walkway in the front of the building.
- The existing sign frame over the entrance to the commercial space.
- The service driveway, entryways for each space, and a shared dumpster at the rear of the building/property.
- The approximate location of the zoning district boundary and rear property line relative to the adjacent residential structure.
- The location of the existing mixed use (commercial and residential building) to the south.

Public Hearing: February 3, 2011

The applicant, Sam Kochan, and his attorney, Kristi Bodin, presented the application. Mr. Kochan's statements are summarized as follows:

- He has been looking for a place in Amherst for four (4) years. This location fits the needs of a healthy, fast food concept as there is ample parking on site and renovation costs would be low.
- The menu will consist of traditional Mexican food with all menu items made on premise.
- He has extensive experience in the restaurant business in Massachusetts, both locally and in Boston.
- The trash and recycling storage is located behind the building and is shared with the two (2) other commercial tenants.
- The property contains approximately 30 parking spaces and one (1) handicapped accessible parking space. The parking area was recently repaved and is in good condition.
- The exterior lighting will consist of existing features located under the overhang over the front walkway and a single fixture at the rear exit door. The rear light fixture is controlled by an interior switch.
- The total occupancy of the space will be 19 people, including both interior and exterior seats, and employees.
- The outdoor dining will be limited to a maximum of four (4) patrons.
- The number of employees will not exceed four (4) at any one time.
- The food service will be "eat-in" but will probably not include waiters or waitresses. A bench seating area will be available for patrons waiting for take-out orders.
- The hours of operation for food service would be from 11:00 A.M. to 12:00 A.M. Monday, Tuesday and Wednesday and from 11:00 A.M. to 2:00 A.M. Thursday, Friday, Saturday and Sundays. Employees may arrive as early as 9:00 A.M. daily to prepare food and may stay on premises until 3:00 A.M. for either cleaning and/or preparation. All patrons will be out of the building by 2:00 A.M.
- If a liquor license can be obtained, they would serve alcohol to patrons. However, at the time of filing for this permit, there are no licenses available. The Management Plan has been revised to include the possibility of alcohol service. The establishment will not be a "bar" because alcoholic drinks such as beer and Margarita's will only be served to those patrons eating on-site.
- The proposal includes take-out and delivery service. The last delivery will be no later than 2:00 A.M. with the last take-out order accepted at 1:45 a.m.
- There will not be any live music inside, but there will likely be ambient music within the space.

- Any necessary noise management of patrons inside or outside will be handled by an on-duty manager, but the small size of the space and limited outdoor dining will likely reduce any noise issues.
- Changes to the interior include re-arranging of the kitchen appliances and installation of a new hood ventilation system.
- Waste oil will be stored in a secured 55 gallon metal drum at the rear of the building. Deliveries of products will occur at the rear of the building during normal business hours.
- Litter control will be conducted by employees on an on-going basis throughout a shift.

The service of alcohol was discussed at some length. The applicant confirmed that alcohol will only be served to patrons who are eating on premises. There was discussion regarding whether ~~or not~~ alcohol should be served to patrons dining in the front on what was referred to as the patio. The Board noted that Section 3.352.1 of the Zoning Bylaw requires that a Management Plan describe how patrons gathering outdoors will be managed. The applicant stated that the number of people gathering outside, if any, would be small and that because the number of people eating outside is limited, managing patrons should not be difficult. The applicant noted that it is not critical that the outdoor dining patrons be able to consume alcohol. He noted further that if alcohol was not served outdoors, it would likely further reduce any potential for disturbances.

The hours of operation were discussed. The Board expressed concern about the establishment being open until 2:00 A.M., which is later than the other establishments in the area. The Board noted a concern of the Building Commissioner as to how patrons will be managed during the later hours, especially between 1:00 A.M. and 2:00 A.M. The Board acknowledged that if this establishment is open and serving alcohol until 2:00 A.M., it could create a crowd coming from the other establishment, which closes at 1:00 A.M. The Board discussed the possibility of limiting the hours during which alcohol could be served outside, such as ending alcohol service at 8:00 P.M. In consultation with the applicant, the Board determined that the hours of operation, for on-premise consumption of food and alcohol service, could be limited to 1:00 A.M. so as to reduce the possibility of patrons leaving the nearby establishment and gathering at this location. The Board determined that hours of operation until 2:00 A.M. for pick-up and delivery could be regulated separately.

The location and visual impact of the dumpster was discussed. The applicant stated that there is no intention to add any additional screening to the dumpster area. He noted that the dumpster has been existing for several years with no complaints and that it would be unfair for their use to be held responsible to screen a dumpster used by multiple tenants.

The Board noted that the Building Commissioner, via the email dated February 3, 2011, finds the outdoor dining arrangement will not cause an impediment to the safe egress to and from the front door, in accordance with Section 5.0412.

Mr. Parent MOVED to close the evidentiary portion of the public hearing. Mr. Ehrgood seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting:

The Board determined that alcohol service, if any, will be limited to those patrons dining inside and on re-usable tableware. The Board decided to prohibit alcohol consumption outside because it concluded that alcohol consumption by outdoor dining patrons could create a noise nuisance to neighbors living in the mixed-use building abutting the property to the south.

The Board determined that the hours of operation will be reduced to 1:00 A.M. for on-premise dining and alcohol service. All patrons eating on premises must be out of the building by 1:00 A.M. Take-out and delivery service may operate until 2:00 A.M. The Board approved employees being on-premise as early as 9:00 A.M. and/or as late as 3:00 A.M.

The Board determined that additional screening around the dumpster will not be required because the dumpster is setback and difficult to see from West Pomeroy Lane and because the single family residence to the west contains a garage that provides a sound and visual barrier shielding the living space of that residence.

The Board discussed whether to maintain the expiration upon change of ownership condition of the previous permit. Mr. Parent argued that requiring a new permit is burdensome and that it should not be conditioned in that way because the property has been a Class II restaurant since at least 2003 without complaints. He also argued that conditioning a special permit to expire upon change of ownership makes it difficult for new owners to obtain bank loans. He stated that it should be sufficient for a new owner to present a Management Plan to the Board at a public meeting to demonstrate compliance with the special permit as issued to the previous owner.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 - The proposal is suitably located in the neighborhood in which it is proposed; and, the proposal is compatible with existing Uses and other Uses by right in the same District. The proposal, with the exception of the service of alcohol, is similar to the previous Class II restaurant which was there since 2003. The restaurant is compatible with the adjacent businesses - an existing liquor store and food establishment – and with other food and alcohol establishments across the street which are also in the Business Village Center Zoning District.

10.382 - The proposal will not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features. The proposal includes the installation of new exhaust hood to mitigate cooking odors and noise; the existing exterior lights in the front shine downward onto the sidewalk and parking area and one (1) exterior light over the rear exit door will illuminate the doorway and dumpster area only.

10.383 & 10.385 & 10.387 - The proposal will not be a substantial inconvenience or hazard to abutters, vehicles or Pedestrians; reasonably protects the adjoining premise from detrimental uses; and, provides convenient and safe vehicular and pedestrian movement within the site and adjacent property. The Management Plan provides for adequate noise management of patrons by employees, the permit is conditioned such that alcohol service is restricted to the interior of the restaurant, and the number of outdoor dining patrons is limited to four (4) to protect adjoining premises from noise created by patrons. The existing parking area and handicapped accessible walkway provide adequate movement for vehicles and pedestrians. In accordance with Section 5.0412, the Building Commissioner determined that the location of the outdoor dining will not unduly hinder safe exit from or access to the establishment.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the proposed use. The exhaust hood in the kitchen will be upgraded for improved operation; the proposal includes trash and recycling storage which will be maintained in accordance with the Management Plan. The space will have the required number of bathrooms and egresses in accordance with local and state requirements. The property is connected to Town water and sewer.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw. The parking area meets the requirements of Section 7.002 which requires 1 space for each 4 seats or where benches are used, 1 space for each 8 lineal feet of bench space. There are approximately 26 parking spaces on-site, which satisfies the requirements for all three uses on the property. Pursuant to the submitted sign plan and Management Plan, the proposed 2.5 feet x 7 foot sign will be internally illuminated and will utilize the existing sign frame on the building. The size and general design is similar to the previously approved sign.

10.388 & 10.389 - The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products; and provides adequate disposal or storage of refuse, recyclables and sewerage. The parking area allows for ample turning and parking areas for large vehicles and the property contains a rear driveway which may also be used for deliveries. There is a common dumpster for all the businesses in the building. The Management Plan states that waste kitchen oil will be stored behind the building and picked up regularly.

10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions. The proposal will not modify the existing lighting arrangement. The existing exterior lights in the front shine downward onto the covered front patio and parking area and one (1) exterior light over the rear exit door will illuminate the doorway and dumpster area only.

10.396 – The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, and similar features. The rear of the property contains existing vegetation which adequately screens the dumpster and storage areas and has not been subject to any complaints. The dumpster and the storage area at the rear of the building are not easily visible from West Pomeroy Lane.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it enhances the quality of life in a village center. The proposal is suitably located within the Business Village Center Zoning District and is compatible with the other commercial and residential uses in the area. The proposal contributes to the Land Use goal of the Master Plan to encourage a “sustainable, attractive town with a vital downtown and viable mixed-use village centers well connected to livable and diverse neighborhoods”.

Public Meeting – Zoning Board Decision

Mr. Parent moved to APPROVE the application with conditions Mr. Ehrgood seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2011-00016, for the operation of a Class II restaurant, d/b/a Mission Cantina, with alcohol service, under Section 3.352.1 of the Zoning Bylaw, as applied for by M.G.B 1, LLC, at 481-485 West Street (Map 19D, Parcel 19, B-VC Zoning District) with conditions

BARBARA FORD

TOM EHrgOOD

MARK PARENT

FILED THIS _____ day of _____, 2011 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2011.
NOTICE OF DECISION mailed this _____ day of _____, 2011
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2011,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00016, for the operation of a Class II restaurant, d/b/a Mission Cantina, with alcohol service, under Section 3.352.1 of the Zoning Bylaw, as applied for by M.G.B 1, LLC, at 481-485 West Street (Map 19D, Parcel 19, B-VC Zoning District) with the following conditions:

1. The interior of the restaurant shall be configured substantially in accordance with the floor plan, revised on January 26, 2011 and stamped approved by the Zoning Board of Appeals on February 3, 2011. Any substantial change to the floor plan shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
2. The operation of the restaurant shall be as described in the Management Plan stamped approved by the Zoning Board of Appeals on February 3, 2011, with the exception of the hours of operation, listed herein. Any substantial change to the Management Plan shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
3. The hours of operation for patron dine-in service shall be from 11:00 A.M. to 1:00 A.M., seven (7) days per week. The hours of operation for delivery and take-out from 11:00 A.M. to 2:00 A.M., seven (7) days per week. All patrons shall be off-premises by 1:00 A.M. for dine-in service and 2:00 A.M. for take-out service.
4. Employees only may be on-site as early as 9:00 A.M. or as late as 3:00 A.M. for purposes such as food preparation or clean-up.
5. The service of alcohol is restricted to interior dining patrons who are being served on reusable tableware.
6. The restaurant occupancy shall be limited to 19 people, which includes staff members, delivery drivers and outdoor dining patrons.
7. The outdoor dining shall be limited to no more than four (4) patrons. The table shall be located substantially in accordance with the location shown on the approved floor plan.
8. The sign shall be of a size and design substantially in accordance with the approved sign plan and Management Plan. Any substantial changes to the sign shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
9. Trash shall be controlled in the outdoor dining area, with monitoring occurring periodically and/or after each meal.
10. The existing shared dumpster shall be located in the rear driveway area and shall be adequate to serve the commercial tenants of the building.
11. The lighting controlled by the applicant, particularly at the rear of the property, shall be extinguished outside of business hours.
12. No outdoor entertainment, in the form of music or human voice (amplified or non-amplified) will be permitted.
13. Any change in ownership of the establishment shall require review and approval of a Management Plan by the Zoning Board of Appeals at a public meeting.

Barbara Ford, Acting Chair
Amherst Zoning Board of Appeals

DATE